STATE OF MICHIGAN

COURT OF APPEALS

LIBERTY HILL HOUSING CORPORATION,

Petitioner-Appellant,

v

CITY OF LIVONIA,

Respondent-Appellee.

UNPUBLISHED
May 16, 2006

No. 258752
Michigan Tax Tribunal
LC No. 00-298536

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal decision denying petitioner's request for a property tax exemption on its low-income residential rental properties for the years 2003 and 2004. We affirm.

"This Court's authority to review a decision of the Tax Tribunal is very limited." *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 221; 668 NW2d 181 (2003). "Judicial review of a determination by the Tax Tribunal is limited to determining whether the tribunal made an error of law or applied a wrong principle." *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28, 31; 568 NW2d 332 (1997). "[E]xemption statutes are to be strictly construed in favor of the taxing unit." *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980).

Petitioner sought an exemption under MCL 211.7o(1), which exempts real property "owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated[.]"

As an initial matter, we agree with petitioner that the Tax Tribunal erred by using a "beyond a reasonable doubt" standard to determine petitioner's entitlement to an exemption. "[T]he beyond a reasonable doubt standard applies only when a petitioner before the Tax Tribunal attempts to establish a class of exemptions." *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494; 644 NW2d 47 (2002). Conversely, "the preponderance of the evidence standard applies to a petitioner's attempts to establish membership in an already exempt class." *Id.* at 494-495. Because the charitable purpose exemption is an established exemption class, MCL 211.7o, and the issue here is whether petitioner can establish membership in that class, petitioner was only required to establish its entitlement to this exemption by a preponderance of

the evidence. *Id.* at 495. Nonetheless, the outcome of this case does not hinge on the weight of the evidence. Applying the plain language of MCL 211.7o(1) to the undisputed facts of this case, we conclude that petitioner is not entitled to claim a charitable exemption for its rental properties.

MCL 211.7o(1) provides that "[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act." The Tax Tribunal found that petitioner qualified as a nonprofit charitable institution, but concluded that its rental properties, which were leased to "qualified low-income disabled individuals," were not "occupied" by petitioner for purposes of MCL 211.70(1). We are persuaded by the tribunal's reasoning in reaching its conclusion.

The tribunal was careful to set out the basis on which an exemption from taxation is granted by quoting from *Ladies Literary Club, supra* at 754:

> An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction. Such an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used, for it is a well-settled principle that, when a special privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. 2 Cooley on Taxation (4th ed), § 672, pp 1403-1404. See *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737 (1948).

Within this framework for determining the existence of a statutory exemption, the tribunal determined that whether the taxpayer owns and occupies the properties in question for purposes of the exemption of MCL 211.7o, depends on the statutory language on which the exemption is claimed which, in turn, must be read in light of other language *in the same statute* and that to conclude that Liberty Hill occupies the properties where its lessees reside does not comport with the plain language of the statute. The tribunal's opinion points out that in a landlord-tenant relationship, the lessee is the *occupant* while the lessor, here petitioner, does not have occupancy rights during the terms of the lease. Further, to find that the non-profit corporate owner/lessor *occupies* the properties by virtue of leasing them to tenant-occupants, even though the tenancy is consistent with the non-profit's corporate purposes, requires a "significant stretch". We agree. It is far more likely that the exemption applies to those instances where the offices and operations of the non-profit organization exist and such a narrow reading of the statute comports with the dictates of *Ladies Literary Club.*

The undisputed facts demonstrate that the properties in question are leased to qualified low-income tenants, and that all of the tenants pay rent under written leases. The leases include provisions for security deposits, late payment fees, and hold-over fees. Under the plain language of the statute, we cannot say that petitioner "occupies" the properties that it leases to tenants for the tenants' personal housing purposes. The Tax Tribunal did not err in determining that petitioner did not "occupy" the properties and, therefore, was not entitled to an exemption under MCL 221.7o.

Affirmed.

/s/ Kathleen Jansen
/s/ Janet T. Neff
/s/ Brian K. Zahra